

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
FEB 20 2008
SCHUMACHER
CLERK

RANCHERS CATTLEMEN ACTION	*	CIV 07-1023
LEGAL FUND; UNITED	*	
STOCKGROWERS OF AMERICA;	*	
HERMAN R. SCHUMACHER;	*	
ROBERT P. MACK; ERNIE J. MERTZ;	*	
WAYNE J. NELSON; SOUTH DAKOTA	*	
STOCKGROWERS ASSOCIATION;	*	
CENTER FOR FOOD SAFETY;	*	
CONSUMER FEDERATION OF	*	
AMERICA; CREUTZFELDT-JAKOB	*	
DISEASE FOUNDATION, INC.;	*	ORDER
FOOD & WATER WATCH; and	*	
PUBLIC CITIZEN,	*	

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF	*
AGRICULTURE; ANIMAL AND PLANT*	
HEALTH INSPECTION SERVICE;	*
CHARLES F. CONNER, in his capacity as*	
the Acting Secretary of Agriculture,	*

Defendants.

A hearing was held on Plaintiffs' Motion for Preliminary Injunction on Tuesday, February 19, 2008. Plaintiffs' contended the Defendants never issued a notice of proposed rulemaking, nor did they seek public comments, on the action taken in the final OTM Rule that allows imports of beef from Canadian cattle over 30 months of age at the time of slaughter. Plaintiffs also argued that Defendants failed to present for public comment an assessment of the human health risks associated with eating beef derived from Canadian cattle 30 months of age or older. Defendants asserted that the OTM beef provision had already been subject to a thorough notice and comment opportunity

when the January 2005 Minimal-Risk Region Rule (“MMR Rule”) was promulgated. The Court requested further briefing on this issue, including legal authority regarding the alternatives available to the Court in the event the Court finds that Defendants violated the Administrative Procedure Act.

The Court also asked the parties to supply the Court with a copy of the GAO report referred to in the pleadings.

Finally, the Court ruled that *amici curiae* may file comments on the matters raised at the hearing, but *amici curiae* must confer and not file duplicate comments. Accordingly,

IT IS ORDERED:

1. That Plaintiffs and Defendants shall provide the Court with a copy of the GAO report referred to in the record on or before Thursday, February 28, 2008.
2. That Plaintiffs’ supplemental brief shall be filed on or before Thursday, February 28, 2008. Defendants shall file their supplemental brief on or before Friday, March 7, 2008.
3. That *amici curiae* may file comments on the matters raised at the February 19 hearing on or before Friday, February 29, 2008, and the parties may file responses to *amici curiae* comments on or before Friday, March 7, 2008.

Dated this 20^π day of February, 2008.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Shelly Margulies
DEPUTY